

## **(See 28 U.S.C. §§ 2241, 2254, and 2255)**

### **LR 81-1 Petitions Generally**

**(a)** Petitions by state prisoners for writs of habeas corpus pursuant to 28 U.S.C. § 2254, and motions pursuant to 28 U.S.C. §§ 2241 or 2255 by federal prisoners who are in custody, must be legibly written or typewritten on forms supplied by the Court and must be signed under penalty of perjury by the petitioner or by a person authorized to sign for the petitioner. The original and two (2) copies of the petition or motion must be sent to the clerk.

**(b)** If the petition or motion is taken *in forma pauperis*, it must include an affidavit setting forth information which establishes that the applicant will be unable to pay the fees and costs of the proceedings. **State prisoners must include a certificate from the warden or other appropriate officer showing the amount of money or securities that the petitioner has in any account in the institution.**

### **LR 81-2 Procedure in Habeas Corpus (See 28 U.S.C. §§ 2254 and 2255)**

All procedures in habeas corpus proceedings and motions under 28 U.S.C. §§ 2254 and 2255 must follow the rules governing such matters in the United States Courts as adopted and amended by the Supreme Court of the United States.

### **LR 81-3 Requirements for First Petition in a Capital Case**

#### **(a) Applicability**

This rule governs the procedures for a first petition for a writ of habeas corpus in which a petitioner seeks relief from a state court's judgment imposing a sentence of death. A subsequent filing will be treated as a first petition under this rule if the original filing was voluntarily dismissed or dismissed for failure to exhaust state remedies. This rule is intended to supplement the Rules Governing § 2254 Cases and is not intended to alter or amend those rules. The application of this rule to a particular petition may be modified by the judge to whom the petition is assigned.

#### **(b) Information on Status of Case**

The Clerk of the Court will periodically request copies of the reports prepared by the State Court

Administrator regarding the status of cases in which an Oregon court has imposed the penalty of death.

### **(c) Notice of Intent to File**

The Attorney General must provide the Federal Public Defender with notice of the following: petitioner's direct appeal conclusion, the filing of the state post-conviction petition, the denial of the state post-conviction appeal, the denial of petitioner's Petition for Review to the Oregon Supreme Court, and the denial of certiorari. Once all of petitioner's state court remedies have concluded, the Federal Public Defender, after consultation with the petitioner, must file promptly with this Court, and send to the Oregon Attorney General's Office, a written notice of intention to file a petition. The notice must state the name of the petitioner, the county in which petitioner was convicted, the place of petitioner's incarceration, and the status of petitioner's state court proceedings. The notice is only for the information of the Court, and failure to file the notice will not preclude the filing of the petition.

### **(d) Counsel**

**(1) Representation by Counsel:** Each petitioner will be represented by counsel, unless petitioner has clearly elected to proceed pro se and the Court is satisfied, after a hearing, that petitioner's election is intelligent and voluntary.

**(2) Appointment of Counsel:** Unless petitioner is proceeding pro se or is represented by retained counsel, the Federal Public Defender must be appointed in every such case upon the filing of the written notice of intention to file a habeas corpus petition. A panel of attorneys qualified for appointment in death penalty cases will be recruited and maintained by the Federal Public Defender. The Federal Public Defender will accept and review referrals to this panel from interested associations and bar groups.

**(3) Two Counsel to be Appointed:** Due to the complex, demanding, and protracted nature of death penalty proceedings, at least two counsel must be appointed in every case.

### **(e) Filing**

**(1) Assignment of Case Number:** Upon the submission of the notice of intention to file a

capital habeas petition, the next sequentially numbered civil case file will be opened and that number assigned to the document. Future submissions relative to the same proceeding will also bear the same civil case number.

**(2) Petition Requirements:** Petitions must be completed in conformance with the Model Form accompanying the Rules Governing § 2254 Cases. All petitions (a) must state whether petitioner has previously sought relief arising out of the same matter from this Court or any other federal court, together with the ruling and reasons of such court, and (b) must set forth any scheduled execution date.

**(3) Copies:** An original and two (2) copies of the petition must be filed by counsel for the petitioner. A pro se petitioner need only file the original. If no fee is tendered or waiver sought with the filing of a petition, the clerk will grant *in forma pauperis* status conditionally, subject to further review by a judge, and will not delay the filing, assignment, or statistical opening of any civil action pending the resolution of *in forma pauperis* status.

### **(f) Assignment to District Judges**

Notwithstanding the general assignment plan of this Court, petitions will be assigned to the District Judges of the Court as follows:

**(1) Category:** The clerk will establish a separate category for these petitions, to be designated with the title Capital Case.

**(2) Participation:** All active District Judges of this Court will participate in the assignments, without regard to intra-district venue.

**(3) Random Assignment:** Until each active District Judge has one capital case, capital habeas cases will be assigned blindly and randomly by the clerk to each of the active District Judges of the Court. At such time as each active District Judge has one capital case, the blind assignment process will start again until each active District Judge, and other judges the calendar management committee finds available, has taken a case. Assignment and new filings will

continue under this procedure.

**(4) Certificate of Unavailability:** If the assigned District Judge has filed a Certificate of Unavailability with the clerk, which is in effect on the date of the assignment, a new random assignment will be made to another judge immediately.

**(5) Previously Assigned Petition:** If petitioner has previously sought relief in this Court with respect to the same conviction, the petition will be assigned to the District Judge who was assigned to the prior proceedings, if he or she is still sitting, unless he or she has taken senior status and has elected not to hear capital habeas corpus petitions.

**(6) Assignment to a Magistrate Judges:** Pursuant to 28 U.S.C. § 636(b)(1)(B), and not inconsistent with law, Magistrate Judges may be designated by the Court to perform all duties under this rule.

### **(g) Order of General Procedure**

**As soon as practicable following the judicial assignment of a Capital Case to a judge, the judge will issue an Order of General Procedure setting an initial case management conference.**

### **(h) Stays of Execution**

**(1) Stay Pending Final Disposition in District Court:** Upon the filing of a petition, unless the petition is frivolous, the judge will order a stay of execution pending final disposition of the petition in this Court.

**(2) Temporary Stay for Preparation of the Petition:** Should petitioner require a temporary stay of execution pending the preparation of a petition, counsel must so move, and the Court will issue a ninety (90) day stay of execution.

**(3) Stay Pending Appeal from District Court:** If the petition is denied and a certificate of appealability is issued, the Court will grant a stay of execution, which will continue in effect until the Court of Appeals issues its mandate.

**(4) Notice of Stay:** Upon the granting of any stay of execution, the clerk will immediately notify the Oregon Attorney General's Office which must immediately notify the Superintendent of the Oregon State Penitentiary. The Oregon Attorney General's Office must ensure that the clerk has a 24-hour telephone number to that office.

**(5) Application of 28 U.S.C. § 2262:** Subsection (1) through (4) of this section (h) apply only if the stay provisions of 28 U.S.C. § 2262 do not apply.

### **(i) Procedures for Considering the Petition**

Unless the judge dismisses the petition under Rule 4 of the Rules Governing § 2254 Cases, the following schedule and procedure will apply, subject to modification by the judge for good cause shown. Requests for enlargement of any time period in the Rule must comply with Local Rules.

**(1) Schedule:** Respondent must, as soon as practicable but in any event on or before sixty (60) days from the date of service of the application for appointment of counsel or the petition, whichever occurs first, file with the Court duplicate copies of any and all documents from petitioner's pretrial, trial, sentencing, direct appellate, post-conviction, and state and federal habeas corpus proceedings. If any documents are not available, respondent must state when, if at all, such missing material can be filed. These documents also must be served on petitioner's lead counsel, unless respondent confirms that petitioner's counsel already has a copy of the documents. Should respondent wish to produce fewer documents than required by this rule, respondent must first demonstrate good cause as to why he or she will not do so.

**(2) Index:** An index of all materials must be prepared reflecting the filing date, title of the document and a reference to the document number for each document submitted. These requirements also apply to any supplements to the state court record.

**(3) Assembling the Record:**

**(A)** Both copies of each document submitted under LR 81-3(i) must be individually tabbed and numbered consecutively.

**(B)** Each document submitted must bear a copy of the state court file stamp. The record must be accompanied by a certification from the clerk of the state court attesting to the authenticity of the documents.

**(C)** The state court record must be submitted in volumes consisting of no more than 250 pages each. Each paper volume must be two-hole punched at the top center and fastened with a two prong fastener. Each paper volume must be identified with the case title and case number as required in [LR 10-2](#) , e.g:

Example	Clerk's Record - Multnomah County Circuit Court
C86-05-323246	
Vol. #1 of 3 Volumes	

**(4) Failure to Comply:** If counsel for petitioner claims that respondent has not complied with the requirements of LR 81-3(i)(1) and (2), counsel for petitioner must immediately notify the Court in writing, with a copy served on respondent.

**(5) Status Conference:** As soon as practicable after the filing of the petition, the Court will set a status conference to determine a schedule for further proceedings.

**(6) Procedural Defenses:**

**(A)** Respondent is responsible for raising procedural defenses in the appropriate responsive pleading(s). A failure to plead any such defense, except exhaustion, before the date of the evidentiary hearing, or submission of the case for decision in cases in which no evidentiary hearing is held, will constitute a waiver of the defense.

**(B)** The respondent may choose to waive a procedural defense in order to address the merits of the claim(s) for which the defense is waived.

### **(j) Evidentiary Hearing**

If an evidentiary hearing is held, the Court will order the preparation of a transcript of the hearing, which is to be provided immediately to petitioner and respondent for use in briefing and argument. Upon the preparation of the transcript, the Court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

### **(k) Rulings**

**(1)** The Court's rulings may be in the form of a written opinion, which will be filed, or in the form of an oral opinion on the record in open court, which will be transcribed and filed promptly.

**(2)** The clerk will notify the Superintendent of the Oregon State Penitentiary and the Oregon Attorney General's Office immediately whenever relief is granted on a petition.

**(3)** The clerk will notify the clerk of the United States Court of Appeals for the Ninth Circuit immediately, by telephone, of (1) the issuance of a final order denying or dismissing a petition without a certificate of appealability, or (2) the denial of a stay of execution.

**(4)** When a notice of appeal is filed, the clerk will transmit the records to the Court of Appeals immediately as required by circuit rules.

### **(l) Return of State Court Record**

Upon conclusion of proceedings at either the district or appellate court level, the clerk is directed to return one copy of the state court record to the office of the Oregon Attorney General.

Amendment History to LR 81

June 1, 2002

LR 81.3(g) Added reference to Appendix of Forms

June 1, 2006

Generally Appendix of Forms number updated

December 1, 2009

Generally The word "shall" has been changed to "will", "may" or "must."

LR 81-1(a) The phrase "and shall be signed and verified by the prisoner" has been deleted.

LR 81-1(b) Added the option for a motion and the second sentence.

LR 81-1(e)(3) The first sentence was amended to conform to LR 81-1 as to the number of

LR 81-3(a) Typographical error "hr" changed to "he."

LR 81-3(c) Amended to require the Oregon Attorney General to provide the Federal Public

LR 81.3(d)(3)-(5) Former subsections deleted. Subsequent subsection renumbered.

LR 81-3(h) Modified for clarity.

LR 81-3(i)(1) Amended to require the State to provide the Court with all documents (regarding